IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2964 OF 2004

Jasmine Kiran Sonone ..Petitioner

Versus

Elvis Thomas & Ors. ..Respondents

Mr. A.S.Desai, for the Petitioner
Mr. M.C. Dixit for Respondent No.1.

CORAM: F.I. REBELLO, J.
DATE : 5th November,2004

P.C.:

1. Rule. Heard forthwith.

2. The petitioner by the present petition impugns the order dated July 23, 2004 for production of documents and the subsequent order dated July 23, 2004 in Appeal No.200 of 2003. By the first order the learned President of the Appellate Court has directed production of documents. In the main Appeal the order of remand has been passed on two counts. Firstly to give an opportunity to the respondent NO.1 to file written statement and secondly for consideration of the documents which are to be taken on record. The learned Appellate Court noted that the respondent No.2 who is the Secretary of the society will be an important witness to find out the whether the application was made on 30th July, 1991 for the membership of the society and thereafter has issued certain directions. At the hearing of the petition on behalf of the petitioner their learned Counsel contends that the documents which have been allowed to be taken on record by order dated 23rd July, 2004 namely xerox copies of the application dated 30th July, 1991 was already on record and in these circumstances there was no question of passing any order of production of documents once again. This has been pointed out based on the order of the IVth Co-operative Court, Mumbai

where the Co-operative Court has noted that the disputant had not produced acknowledgement on record to application dated 30th July, 1991.

2. The short question is whether this Court in the exercise of its extra ordinary jurisdiction should interfere with the order permitting production of documents as also the order of remand. From the record it is clear that in the evidence of Kumud K. Dhange, recorded on 9th October, 1996 the following evidence has come on record:-

> "I am producing the office copy of the appln. of membership made by Disputant. It is xerox copy. The contents are correct. It is marked as Ex.D-3."

There was no cross examination on this count. In other words there is some material on record to show that the application for membership was made by the disputant. It is now settled law that if secondary evidence is allowed to be led, unless the production of the secondary evidence is opposed and instead allowed to be marked, the objection to its admission therefore, cannot be raised. There is a document to show that the disputant had applied for membership and from the written statement of disputant No.3 it is so admitted. The Appellate Authority was also right in holding that since the entire transaction was done through Mr. Laxman Sadashiv Karle, the Secretary, he would be very much a relevant witness and he needs to be examined. The society in the instant case did not lead any evidence.

3. Considering the above to my mind no prejudice has been occasioned to any of the parties by the impugned order of remand. In the light of that no case for interference.

Petition rejected.

(F.I.REBELLO, J.)